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4 Chapter 7 Bankruptcy Trustee

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8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

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11 In re:) CASE NO. BK-S-17-16306-btb
12 NEAL ALAN SCHNOG) CHAPTER 7
13)
14 Debtors.) Date: OST requested
Time: OST requested

15 MOTION TO COMPEL DEBTOR TO COOPERATE WITH SPECIAL COUNSEL

16 Shelley D. Krohn, duly appointed Chapter 7 Trustee in the above-
17 referenced proceeding ("Trustee"), hereby moves this court for an
18 order compelling the Debtor to cooperate with the Estate's special
19 counsel in the personal injury cause of action.

20 This Motion is made and based upon the accompanying Memorandum
21 of Points and Authorities, the papers on file herein and any oral
22 argument that the Court may entertain at the time of any hearing on
23 this motion.

24 POINTS AND AUTHORITIES

25 I.

26 FACTUAL BACKGROUND

- 27 1. This case was commenced by the filing of a petition under
28 Chapter 7 on November, 24, 2017 by Neal Alan Schnog

1 ("Debtor").

- 2 2. On his Schedule A/B, the Debtor disclosed a product
3 liability claim against the makers of Nexium for kidney
4 damage. See ECF 13, page 7.
- 5 3. On June 15, 2018, the Trustee filed an Ex Parte Application
6 to employ special counsel for the estate. Special counsel
7 was needed to pursue the Estate's interest in the Debtor's
8 product liability claim. See ECF 55.
- 9 4. On June 19, 2018, the court entered an order authorizing
10 the employment of *Levin, Papatonio, Thomas, Mithcell,*
11 *Rafferty & Proctor, PA* along with *Johnson & Vines*
12 (collectively referred to as "Special Counsel"). See ECF
13 58.
- 14 5. To avoid the expiration of the statute of limitations,
15 Special Counsel initiated legal proceedings against Nexium
16 in June of 2018.
- 17 6. The legal proceedings are contained within the Proton Pump
18 Inhibitors MDL in U.S. District Court, District of New
19 Jersey (MDL No. 2789).
- 20 7. Special Counsel requires the cooperation of the Debtor to
21 complete the court-mandated document production per Case
22 Management Order No. 9. A copy of this Order is attached
23 as Exhibit "A".
- 24 8. If this document production is not completed and uploaded
25 on or before September 4, 2018, it is likely that the
26 Debtor's complaint will be dismissed with prejudice.
- 27 9. On August 1, 2018, the Trustee received an email from
28 Special Counsel describing in great detail the Debtor's

1 lack of cooperation in these MDL proceedings. See Exhibit
2 "B" attached hereto (privileged content has been redacted).
3 This lack of co-operation is disturbing since the Debtor
4 had initially agreed to fully cooperate. See Exhibit "B".

5 10. Presently, there are over \$800,000 in unsecured claims
6 filed in this bankruptcy matter.

7 11. The Trustee now moves this Court for an order compelling
8 the Debtor to provide his full and timely cooperation with
9 the Trustee and Special Counsel in regard to the
10 prosecution of the MDL cause of action that could result in
11 a significant distribution to creditors.

12 II.

13 **LEGAL ARGUMENT**

14 As set forth above, Special Counsel has attempted to secure the
15 Debtor's voluntary participation in the MDL proceedings. The Debtor's
16 failure to cooperate with the Trustee and her Special Counsel in the
17 administration of the estate pursuant to 11 U.S.C. §521 is
18 jeopardizing the existence of a significant asset.

19 Pursuant to 11 U.S.C. §521(a)(3), if a trustee is serving, it is
20 the duty of debtors to cooperate with the Trustee as necessary to
21 enable the trustee to perform the trustee's duties under this title.

22 "§521 Debtor's duties

23 (a) The Debtor shall

24 (3) if a trustee is serving in the case or an auditor appointed
25 under section 586(f) of title 28, cooperate with the trustee as
26 necessary to enable the trustee to perform the trustee's duties under
27 this title"; . . .

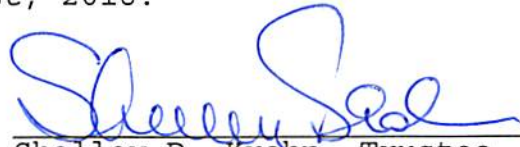
1 This section mandates that the Debtor shall cooperate to permit
2 the trustee to perform her duties.

3 III.

4 CONCLUSION

5 Movant respectfully requests this Court enter an Order compelling
6 the Debtor full and timely cooperation with the Trustee and Special
7 Counsel in regard to the prosecution of the MDL cause of action.

8 DATED this 2nd day of August, 2018.

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12 Shelley D. Krohn, Trustee
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